

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

CITY OF PHENIX CITY, ET AL,	}	
	}	
Plaintiffs,	}	
	}	
vs.	}	CIVIL ACTION NO. 3:06-CV-1074
	}	
MCKENZIE TANK LINES, INC.,	}	
	}	
Defendant.	}	

**DEFENDANT MCKENZIE TANK LINES, INC.'S MOTION TO  
DISMISS PLAINTIFFS' COMPLAINT PURSUANT TO RULE 12(b)(6)**

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and the Local Rules of this Court, McKenzie Tank Lines, Inc. ("McKenzie"), through its undersigned counsel, hereby moves to dismiss the Complaint filed by Plaintiffs in the above-captioned matter because the Plaintiffs' allegations fail to state a claim for relief as a matter of law.

In support of its Motion, McKenzie relies upon its Memorandum In Support of its Motion to Dismiss Plaintiffs' Complaint Pursuant to Rule 12(b)(6) and the authorities cited therein which is filed contemporaneously herewith.

WHEREFORE, Defendant McKenzie Tank Lines, Inc. respectfully requests that the Court dismiss Plaintiffs' Complaint under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted. For the Court's convenience, attached hereto as Exhibit "A" is a proposed Order.

Done this 8th day of December, 2006.

**BALL, BALL, MATTHEWS & NOVAK, P.A.**

/s/ Richard E. Broughton  
RICHARD E. BROUGHTON (BRO043)

2000 Interstate Park Drive  
Suite 204  
Montgomery, AL 36109  
Telephone: (334) 387-7680  
Facsimile: (334) 387-3222

OF COUNSEL

**SMITH, GAMBRELL & RUSSELL, LLP**

Stephen E. O'Day  
Georgia Bar No. 549337  
Andrew M. Thompson  
Georgia Bar No. 707319  
Christopher J. Bowers  
Georgia Bar No. 071507

Suite 3100, Promenade II  
1230 Peachtree St., N.E.  
Atlanta, GA 30309-3592  
Telephone: (404) 815-3500  
Facsimile: (404) 815-3509

Counsel for Defendant  
McKenzie Tank Lines, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on this date, I electronically filed the foregoing **McKenzie Tank Lines, Inc.'s Motion to Dismiss Plaintiffs' Complaint Pursuant to Rule 12(b)(6)** with the Clerk of the Court using the CM/ECF system, which will automatically send email notification of such filing to the following attorneys of record:

James P. Graham, Jr., Esq.  
P.O. Box 3380  
Phenix City, Alabama 36868  
Attorney for the City of Phenix City

Kenneth L. Funderburk, Esq.  
P.O. Box 1268  
Phenix City, Alabama 36868  
Attorney for Russell County, Alabama

/s/ Richard E. Broughton  
COUNSEL FOR DEFENDANT

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

CITY OF PHENIX CITY, ET AL,	}	
	}	
Plaintiffs,	}	
	}	
vs.	}	CIVIL ACTION NO. 3:06-CV-1074
	}	
MCKENZIE TANK LINES, INC.,	}	
	}	
Defendant.	}	

**ORDER**

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 2007, upon consideration of Defendant McKenzie Tank Lines, Inc.'s Motion to Dismiss Plaintiffs' Complaint Pursuant to Rule 12(b)(6), and any response thereto, it is hereby ORDERED that said Motion is GRANTED.

BY THE COURT:

---